

ENTERED

November 23, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PERCY UTLEY,	§	CIVIL ACTION NO.
Plaintiff,	§	4:20-cv-01907
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
CITY OF HOUSTON,	§	
<i>et al</i> ,	§	
Defendants.	§	

ORDER

The complaint in this action by Plaintiff Percy Utley was previously dismissed without prejudice. Dkt 29. Now pending is his motion for leave to file an amended complaint. Dkt 33.


The City of Houston responded, arguing that Utley in bad faith and with a dilatory motive “seeks leave to amend his complaint to allege facts known to him since at least as early as November 20, 2020.” Dkt 34 at 3. It further asserts that “Utley offers no explanation for the unreasonable delay,” and that he “should therefore be estopped from reversing positions now, after substantial delay, waste of judicial resources, and prejudice to the Defendants.” *Id* at 4–5. The City also argues that leave should be denied as futile, asserting that the proposed amendment doesn’t cure the prior deficiencies. *Id* at 5–8.

Utley didn’t reply. His failure to address in reply the pertinent arguments raised in the City’s response is treated as waiver of opposition. For example, see *Clayton v ConocoPhillips Co*, 722 F3d 279, 299 (5th Cir 2013) (argument not briefed in reply waived). Review of the proposed amendment also discloses that it fails to cure prior deficiencies. In particular, see Dkt 34 at 6–7.

The motion for leave to amend by Plaintiff Percy Utley is DENIED. Dkt 33.

SO ORDERED.

Signed on November 23, 2021, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge